

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Are You Setting Your Agency up for a Claim?

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Solid documentation should be your goal – and can heavily determine which way an E&O claim goes. Your first step should be to detail your agency's documentation expectations and ensure they are thorough.

KEY COMPONENTS OF GOOD DOCUMENTATION

- **Handling it promptly and accurately** and stating the expectation of "promptly."
- **Being detailed**, including in emails, and defining who, what, when, where, and why.
- **Creating a list of approved abbreviations** if your agency uses them.
- **Noting the names** of the people the agency spoke with.
- **Having the staff member who had the discussions generate the documentation.** This makes the documentation more credible.
- **Including only facts** and being void of emotion. Don't put anything in the notes that a jury could see. Your notes should help you, not hurt you if an E&O matter were to develop.
- **Not admitting fault.**

*If it is not in the file,
it didn't happen.*

WHEN DOCUMENTATION SHOULD TAKE PLACE

Take notes of any conversations the agency staff has with clients or with carriers/wholesalers. Common scenarios include:

- **Client meetings.** In-person or virtually, these occur throughout the sales process. Determine who is responsible for taking meeting notes, which should include who was in the meeting, what was discussed, and any open items.
The discussion should then be memorialized in writing to the client, recapping the discussion and what was agreed upon. This will help to ensure there are no misunderstandings between the various parties. Without this level of documentation, it could be an issue of "he said, she said" if a problem developed – and such situations are difficult to win.
- **Discussion with carriers/wholesalers, etc.** Agreements are often made between the various parties on a coverage/limits issue. Most agency staff believe that the carrier/wholesaler will honor those discussions if a problem develops. But what if the person you spoke with is no longer with the carrier? Memorialize these conversations in written communication back to the carrier.
- **Client discussion over the phone.** Suppose a client calls to advise the agency "regarding the umbrella proposal you provided, we're passing on that coverage." In addition to documentation in the agency file, send the client a note confirming their decision. Without this, there could be a serious question about what the client's decision was.
- **"What if" questions.** These fall into the scenario of "Johnny is thinking of taking the car to college. How much would that cost?" You advise the client, and they advise they will get back to you. Document these discussions in the file and memorialize them back to the client.

These are just some scenarios to include. **Meet with agency staff to discuss this issue and present them with procedures detailing your documentation expectations.**

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